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February 23, 2004
Ms Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 03-220

Dear Ms Dortch:

This is to inform you that on February 20, 2004, Barbee Ponder and I, representing BellSouth, met with Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin. The purpose of the meeting was to present additional information in support of BellSouth's petition for forbearance from §§ 251 (c)(3), (c)(4), and (c)(6) of the Communications Act of 1934, as amended ("the Act") and to discuss what constitutes "full implementation" for purposes of Section 10(d) of the Act. During the meeting, the BellSouth representatives defined the standard that BellSouth asserts the Commission should apply in making this determination and explained how, under that standard, the requirements of Section 10(d) had been met in relation to BellSouth's petition for forbearance from §§ 251 (c)(3), (c)(4), and (c)(6) of the Communications Act of 1934, as amended. The attached documents formed the basis for the discussion.

In accordance with Section 1.1206, I am filing this notice and the attachment electronically and request that you please place both in the record of the proceeding identified above. Thank you.

Sincerely,



Kathleen B. Levitz

Attachments

cc: Daniel Gonzalez

THE FCC AND BELL SOUTH HAVE “FULLY IMPLEMENTED” THE REQUIREMENTS OF SECTION 251(c)

- Section 10(a) provides that the Commission shall forbear from applying any regulation or provision of the Act if the Commission determines that –
 - enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory;
 - enforcement of such regulation or provision is not necessary for the protection of consumers; and
 - forbearance from applying such provision or regulation is consistent with the public interest.
- BellSouth’s Petition for Forbearance in Multi Premise Developments (MPDs) seeks forbearance from sections 251(c)(3), (c)(4) and (c)(6) for facilities **used exclusively to serve MPDs.**
- Section 10(d) provides that the Commission may not forbear from applying the requirements of Section 251(c) until it determines that those requirements have been “fully implemented.”
- Through the 271 application process, this Commission ensured that BellSouth has “fully implemented” the requirements of sections 251(c)(3), (c)(4) and (c)(6), thus allowing the Commission to forbear under section 10(a) where the requirements of that subsection are met.

THE 271 APPLICATION PROCESS:

- In reviewing BellSouth's 271 applications for each of its 9 states, the Commission consistently held:

“In order to obtain authorization under section 271, the BOC must ... show that ... it has ‘fully implemented the competitive checklist’ contained in section 271(c)(2)(B)....” E.g., La/Ga 271 Order, Appendix D, ¶¶ 3 & 5.

- The Commission has previously determined that BellSouth has “fully implemented” the competitive checklist in each of its 9 states.
- The Commission's review of BellSouth's implementation of the Section 271 competitive checklist entailed a thorough examination of BellSouth's implementation and compliance with each of the requirements of 251(c)(3), (c)(4) and (c)(6).

UNBUNDLED ACCESS SECTION 251(c)(3)

Section 251(c)(3) requires BellSouth to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory.

Checklist Item 2 ensures that BellSouth provides nondiscriminatory access to network elements in accordance with the requirements of Section 251(c)(3) and 252(d)(1).

With respect to this checklist item, the Commission has:

- Ensured that competitive local exchange providers have access to BellSouth's Operations Support Systems (OSS) for pre-ordering, ordering, provisioning and maintenance and repair. In analyzing BellSouth's compliance with each of these OSS functions, the Commission ensured that BellSouth has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and is adequately assisting competing carriers. The Commission also examined performance measurements and other evidence of commercial readiness to ensure that BellSouth's OSS can handle the demand.

SECTION 251(c)(3) (con't.)

With respect to this checklist item, the Commission has also:

- Ensured that competitive local exchange providers have nondiscriminatory access to BellSouth's billing functions.
- Ensured that BellSouth has an adequate change management process and has adhered to this process over time.
- Ensured that BellSouth offers "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory." Further, the Commission ensured that BellSouth provides UNEs in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.
- Ensured that BellSouth offers UNEs at just and reasonable rates as established by state commissions in compliance with the costing methodology adopted by this Commission.

In order to comply with the requirements, BellSouth:

- Has spent over \$2 Billion in order to meet the requirements of 251;
- Tracks and reports on a monthly basis to each State Commission its performance under an average of 75 distinct service quality performance measurements, each subject to significant further disaggregation; and
- Backsliding on performance exposes BellSouth to penalties capped at between 36% and 44% of the Company's net revenue (interstate and intrastate).

RESALE SECTION 251(c)(4)

Section 251 (c)(4) requires BellSouth:

- To offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
- Not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Checklist Item 14 – Resale – ensures that BellSouth makes “telecommunications services ... available for resale in accordance with the requirements of section 251(c)(4) and 252(d)(3).

With respect to this checklist item, the Commission has ensured that state commissions within BellSouth’s region have established wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

COLLOCATION SECTION 251(c)(6)

- Section 251(c)(6) requires BellSouth to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier; except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.
- The Commission has ensured that BellSouth has fully implemented the collocation requirements of Section 251(c)(6) as part of its review and consideration of Checklist Item 1 concerning Interconnection. As the Commission has previously held, “[t]he provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.” La/Ga 271 Order, Appendix D, ¶20.
- In order to comply with Checklist Item 1, the Commission requires BellSouth to provide shared caged and cageless collocation arrangements as part of its physical collocation offerings as required in the *Advanced Services First Report and Order*, to allow the collocation of all equipment meeting the criteria established in the *Collocation Remand Order*, including allowing cross-connects between collocated carriers, and complying with the principles established for physical collocation space and configuration.
- In order to find full compliance with these collocation obligations, the Commission found that BellSouth had processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are “just, reasonable, and nondiscriminatory” in accordance with section 251(c)(6) and the Commission’s implementing rules.
- Further, the Commission reviewed BellSouth specific performance data ensuring the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space.
- Indeed, BellSouth tracks and reports on a monthly basis to each State Commission its collocation performance under three distinct service quality performance measurements each subject to further disaggregation.
- Backsliding on performance exposes BellSouth to penalties capped at between 36% and 44% of the Company’s net revenue (interstate and intrastate).

SUMMARY

- BellSouth has fully implemented each and every statutory obligation, as well as every rule and regulation promulgated by the Commission, concerning the subsections at issue in BellSouth's MPD forbearance petition. As this Commission has previously concluded on multiple prior occasions, BellSouth has indeed fully implemented Sections 251(c)(3), (c)(4) and (c)(6). Thus, section 10(d) does not bar the Commission from granting the forbearance relief requested in MPDs.
- The Commission should not now create some new interpretation of Section 10(d) that would artificially limit the Commission's jurisdiction to forbear where the requirements of Section 10(a) are otherwise met.
- The fact that the specific requirements imposed upon BellSouth under Sections 251(c)(3), (4) & (6) may change over time does not provide a legitimate basis for finding that those provisions are not "fully implemented."
- Indeed, BellSouth should be subject to *fewer* requirements in the future as facilities-based competition in the local market continues to grow.
- If anything, both this Commission and BellSouth have not simply "fully implemented," but rather have *over* implemented the requirements of Section 251(c) of the Act.

**BellSouth's Petition for
Forbearance of Sections
251(c)(3), (c)(4), and (c)(6)
in New Build, Multi-Premises
Developments**

WC Docket No. 03-220

BellSouth's Request

- BellSouth is seeking only an equal opportunity to compete to serve New Build, Multi-Premises Developments (New Build MPDs)
 - The FCC has already recognized that
 - ILECs have no inherent advantage in serving New Build MPDs
 - Competitive providers have lower labor costs.
 - Today among those competing to serve such developments in the BellSouth region, only BellSouth has unbundling, discounted resale and collocation obligations
 - Without these requirements, BellSouth could make more attractive offerings to the developers of such units
 - Ultimately consumers would be the beneficiaries of the resulting increased competition

Topics for Discussion Today

- Why BellSouth filed its forbearance petition
- How the relevant statutory provisions hobble BellSouth today
- How this hobbling affects the competitive environment
 - The North Carolina Experience
- Why Section 10(d) does not forestall the relief BellSouth seeks

Why a Forbearance Petition?

- As the Research Triangle, North Carolina, experience shows, the obligation to comply with the relevant statutory provisions has placed, and will continue to place, BellSouth at an unreasonable disadvantage as it tries to compete for access to New Build MPDs.

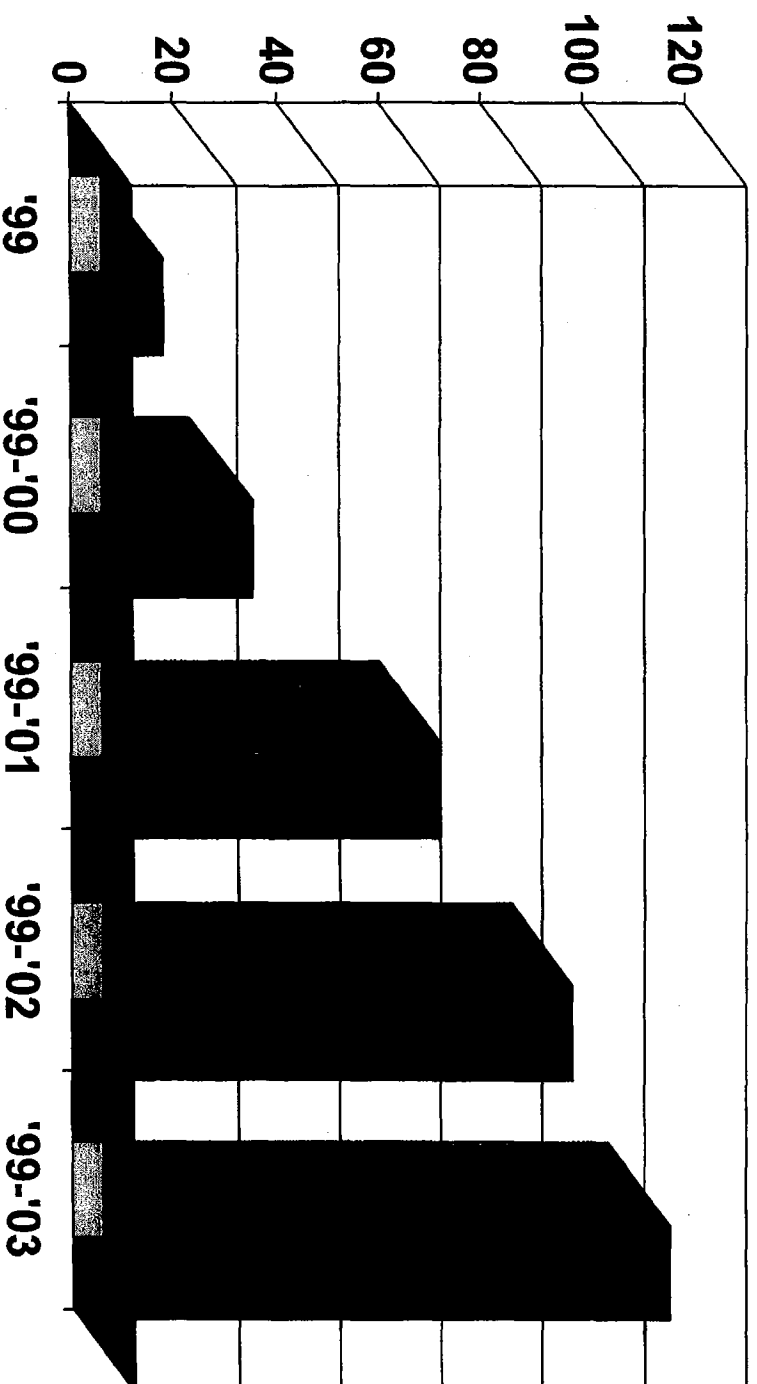
How the provisions from which BellSouth seeks forbearance produce this outcome

- UNE rates handicap BellSouth when competing for marketing rights to greenfield projects
- In planning their proposals to developers, other competitors can assume they will have 100% retail market share, and pay developer accordingly
- Requested relief will allow us to better compete for marketing rights and justify cost of FTTC deployment

How this hobbling affects the competitive environment

- As the attached charts show, BellSouth has lost, and continues to lose a growing share of, new-build, multi premises development business opportunities available annually in its region
- BellSouth is not even “invited to the table” to negotiate for many new developments
- Cable operators are announcing their intent to use VoIP technology to enter the voice services market during the coming year
- Thus the magnitude of opportunities lost annually will only grow

“Lost” Developments by Year



December 9, 2003

BellSouth Presentation

Research Triangle Experience Illustrates Impact of Statutes

- Attached charts show
 - New build, single family and multi-premise development units in Research Triangle between 1999 and 2005
 - Percentage of units that BST does not serve
- Charts also show
 - How other carriers not burdened by statutes prevail with increasing frequency in competitive negotiations for new builds
 - How cable companies' entry into voice market will significantly accelerate this trend's growth

BellSouth has met the three requirements of Section 10(a)

- With the continued application of Sections 201, 202, 251 (a) and (b), Section 271 and parallel state regulation, enforcement of Sections 251 (c)(3), (c)(4) and (c)(6) is not necessary
 - to ensure that charges, practices, classifications, or regulations by, for, or in connection with these facilities and services in unnecessary (Section 10(a)(1))
 - to protect consumers (Section 10(a)(2))
- The requested forbearance will also facilitate robust competition to serve new build, multi-premises developments, ultimately to the benefit of consumers. (Section 10(a)(3))

Why Section 10(d) does not foreclose the relief BellSouth seeks

- The Commission has already found that Section 251(c) has been fully implemented throughout the BellSouth region.
- The statute contains no market share test for determining when Section 251 (c) has been “fully implemented.”
- The CLECs’ interpretation of Section 271(d)(6) cannot be reconciled with Section 10(d).
- The Verizon O,I& M Order does not bar the relief BellSouth seeks.

Summary

- BellSouth needs evenhanded regulation to be able to compete successfully to offer facilities and services to customers in new build, multi-premises developments.
- The limited forbearance that BellSouth seeks would promote more robust competition and, ultimately, benefit the public interest.
- There is no statutory impediment to granting the relief BellSouth seeks

TRIANGLE New Build MPD Summary
12-01-2003

Facility Based CLEC - Analysis of Living Units served to the Curb

Residential New Build Units Served - Analysis		1999	2000	2001	2002	2003	2004	2005	Ave '01 >'04
Residential New Build Units Provisioned (Raleigh/Chapel Hill MSA)	Single Family "New Build " Units Served - Total	7,301	7,377	5,887	5,887	5,887	5,058	5,225	5,225
	Single Family "New Build " Units Served - By CLEC	0	0	157	1,000	657	681	865	638
	% Single Family "New Build " Units Served - By CLEC			2.7%	17.2%	11.2%	13.5%	16.6%	12.2%
	Multi-Family (Apts) "New Build " Units Served - Total	5,278	7,936	3,843	3,135	2,432	2,456	2,835	3,011
	Multi-Family (Apts) "New Build " Units Served - by CLEC	0	0	775	505	300	469	600	422
	% Multi-Family (Apts) "New Build " Units Served - by CLEC			20.2%	16.1%	12.3%	19.1%	21.2%	14.0%
	Total "New Build " Units Served	12,579	15,313	9,730	8,992	8,319	7,514	8,060	8,236
	Total "New Build " Units Served - By CLEC	0	0	932	1,505	957	1,150	1,465	1,060
	% Total "New Build " Units Served - By CLEC			7.2%	16.7%	11.5%	15.3%	18.2%	12.9%

TRIANGLE New Build MPD Summary

12-01-2003

New Build MPD Residential Units Provisioned - % Competitive Presence & Market Penetration Rates (Raleigh/Chapel Hill MSA)

	1999	2000	2001	2002	2003	2004	2005	Ave '01 >'04	
1) CLEC - Facility Based Competition - New Build MPD Penetration Rate (CLEC By-Pass Substitution Rate- Calculated)	0%	0%	7.2%	16.6%	13.2%	15.3%	18.2%	12.9%	< CLECs capture 100% of the New Build MPD they target
2) Wireless Substitution Rate (Living Units without Landlines) (Wireless New Build Substitution Rate- Conservative Estimates)	0.5%	3.7%	5.5%	8.5%	12.7%	15.3%	17.1%	10.6%	< Primarily a MDU issue (5% in SF / 35% in MF)
3) CABLE TV / IP Telephony - Penetration Rate (CATV-Telephony Substitution Rate- Begins 2004 - Estimates)	0%	0%	0%	0%	0%	5%	15%	1.5%	< VOIP Rollout in 2004
Total Residential Market - Penetration Rate	0.5%	3.7%	12.7%	25.1%	25.9%	35.6%	50.3%	25.0%	
A) CABLE TV Facility Based Overlay - Penetration Rate (CATV Facility Based Overlay - % Telco Units Passed)	96.9%	97.1%	97.3%	97.3%	97.4%	97.5%	97.7%	97.4%	< Facility Overlay almost 100%
B) BROADBAND Facility Based Overlay - Penetration Rate (Broadband Only - Facility Based Providers- % Telco Units Passed)	0%	0%	0.001%	0.001%	0.001%	0.010%	0.015%	0.010%	

Lost Developments by Type

	<u>Orlando</u>	<u>All other FL*</u>	<u>FL</u>	<u>NC</u>	<u>MS</u>	<u>TN</u>	<u>GA</u>	<u>SC</u>	<u>LA</u>	<u>Total- all States</u>
Single Family	1	3	4	25	4		2	1		36
Multi-family/MDU	32	1	33	23	1				1	58
Total Consumer	33	4	37	48	5	0	2	1	1	94
Mall			0	4			1	1		6
Office complex			0	2	1		2			5
Total Commercial	0	0	0	6	1	3	1	0	0	11
Total Mixed Use		1	1	3						4
Total all Types	33	5	38	57	6	3	3	1	1	109

* Pensacola, Panama City, Palm district

Lost Developments by Competitor

FL- Orlando

Orlando Tel	14
AT&T	9
Time Warner	4
FL MultiMedia	3
Campus Link	2
Sprint	1
	<u>33</u>

NC

CTC	51
NTC	2
Comporium	1
Pineville Tel	1
Other	2
	<u>57</u>

TN

AT&T	1
XO	1
US LEC	1
	<u>3</u>

LA

New Tech	1
	<u>1</u>

FL- All other

Knology	2
IDS / Hometown CATV	2
BCI/DSSI	1
	<u>5</u>

MS

Bay Springs	4
Expetel	2
	<u>6</u>

GA

Hargray	2
CTC	1
	<u>3</u>

SC

Pond Branch	1
	<u>1</u>

Wire Center	Consumer Property	Access 24/7 Yes or No	Single Family or Multi Family	# of LUs	Service Date E = Expected	Compositor	Type Revenue Loss
Azalea Park	Waterford Pointe Apts. 12900 Waterford Wood Cir. Orlando, FL. 32828	Yes	M	240	1/15/01	(AT&T) OTC	PF
Azalea Park	Harbour Keys 5749 Gailin Ave. Orlando, FL 32822	Yes	M	480	8/20/01	AT&T	UNE
Azalea Park	Highland Pointe 7721 Silver Pointe Blvd Orlando, FL 32822	Yes	M	272	8/22/01	AT&T	UNE
Azalea Park	*University Club Apts. 12024 Royal Wulff Ln. Orlando, FL 32817	Yes	M	898	10/18/01	AT&T	UNTW
Pinecastle	Audobon Villas, Hunter's Creek, Town Center Blvd	Yes	M	376	existing	AT&T	UNTW
Pinehills	Silver Cove		M	192		AT&T	UNE
Pinehills	River Oaks, Little River Loop		M	168		AT&T	UNTW
Pinehills	Lake Weston Pl		M	234		AT&T	UNE
Pinehills	Willow Key		M	380		AT&T	UNTW
Azalea Park	*Knights Crossing 12101 Knights Crossing Cir Orlando, FL. 32817	Yes	M	2500	8/1/98	Campus Link	PF
Azalea Park	*Knights Kourt (formerly College Park) 2835 College Knight Ct. Orlando, FL. 32826	Yes	M	1200	8/1/98	Campus Link	PF
Azalea Park	*Boardwalk Apartments Alafaya Trail Orlando, FL., 32826	Yes	M	480	6/30/01E	Florida Consolidated Multimedia Services Inc.	PF
Oviedo	*Riverview Apartments 100 Riverview Way Oviedo, FL. 32765	Yes	M	480	8/1/00	Florida Consolidated Multimedia Services Inc.	PF
Azalea Park	Valencia Trace Apts. 101 Grande Valencia Dr. Orlando, Florida	Yes	M	229	9/1/03	Florida Multimedia Service	PF

Azalea Park	*College Station 12100 Renaissance Ct. Orlando, FL 32828	Yes	M	78	9/12/00	OTC	PF	
Azalea Park	*The Village of Alafaya Club 3100 Alafaya Club Dr Orlando, FL 32828	Yes	M	798	8/1/99	OTC	PF	
Azalea Park	*College Suites of Science Drive 2813 Einstein Way Orlando, FL 32828	Yes	M	872	9/1/00	OTC	PF	
Azalea Park	Cypress at Waterford Alafaya Trail Orlando, FL 32828	Yes	M	340	3/1/01	OTC	PF	
Azalea Park	Victoria Place Apts. Town Center Parkway Orlando, FL 32828		M	320	8/15/02E	OTC	PF	
Oviedo	*Tivoli Apartments 4284 Spoleto Cir Oviedo, FL 32765	Yes	M	672	3/28/01	OTC	PF	
Sandlake	Cypress Fairways, 5443-5483 Vineland Rd		M	385	9/1/99	OTC	CF	
Sandlake	Vizcaya, The Esplanade	No	SF	186	12/1/2000E	OTC	CF	
Sandlake	Vizcaya, The Esplanade		M	403	unknown	OTC	CF	
Pinehills	Tuscan at Grove Pt. 6053 Westgate Dr. Orlando, FL		M	238	12/15/99	OTC	PF	
Pinehills	Park Avenue At MetroWest	no	M	743	11/1/00	OTC	CF	
Pinehills	Hawthorne Groves apts.	no	M	328	5/1/01	OTC	PF	
Pinehills	Middlebrook Apts Conroy Rd	no	M	320	8/30/01	OTC	CF	
Azalea Park	*Collegiate Village Inn 11850 University Blvd. Orlando, FL 32828	Yes	M	636	8/1/95	Sprint	PF	
Pinehills	Carlisle Apts@ MetroWest		M	250	8/1/97	TWC	R	

Pinehills	Courtney Place on Kirkman Rd		M	240	8/22/97	TWC	R	
Pinehills	Vivings @ Lenox Pl		M	470	2/8/98	TWC	R	
Pinehills	Vivings Club		M	400	4/1/97	TWC	R	
Pinecastle	Grande Pointe Apts Honour Rd		M		9/30/2001E		PF	

TOTAL Living Units Lost:

18562

OTC: Orlando Telephone Company / TWC: Time Warner Company

* Properties that Lease by the Bedroom (Student Housing)

--- Complete Facility Bypass (CF), Partial Facility Bypass (PF) or Resale (R). Resale Activity Probably Much Higher Than Shown, But We are Unaware.

(UNTW) Unbundled NTW, (UNE) Unbundled Network Element - most are locations where CLEC utilizes our F2 facility from xbox out.